



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

May 20, 2010

To: Supervisor Gloria Molina, Chair
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

A handwritten signature in black ink, appearing to read "W. T. Fujioka", is written over the printed name and title.

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

AB 811 PROGRAM UPDATE

On May 25, 2010, your Board is scheduled to hold a public hearing to approve the Los Angeles County Energy Program (LACEP) as authorized by California Assembly Bill 811 (AB 811). LACEP is one of numerous programs being established nationwide to provide loan financing secured by assessments to qualified real property owners for the installation of energy efficiency improvements. Such programs are often referred to as Property Assessed Clean Energy (PACE) programs.

On May 5, 2010, Fannie Mae and Freddie Mac issued public letters (attachments 1 and 2) in response to various issues that have been raised by the emergence of PACE programs. The specific purpose of the letters was to address the first lien priority that PACE loans generally have over previously recorded mortgages. Both Fannie Mae and Freddie Mac commented that the uniform securities instruments issued by these agencies prohibit loans that have a senior lien status to a mortgage.

Fannie Mae and Freddie Mac play a central role in the U.S. mortgage system and provide security for the vast majority of mortgages issued in Los Angeles County. It is critical that these two federal agencies provide clarification regarding the impact that a PACE loan might have on an existing mortgage. LACEP is structured on the premise that an AB 811 loan will have a priority status relative to a mortgage and that no adverse action will be taken against the program by either Fannie Mae or Freddie Mac.

"To Enrich Lives Through Effective And Caring Service"

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Each Supervisor
May 20, 2010
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In response to the letters issued by Fannie Mae and Freddie Mac, the U.S. Department of Energy (DOE) released formal guidelines for PACE financing programs on May 7, 2010. These guidelines provide a list of best practices that the DOE recommends PACE programs adopt in developing their financing policies. Both the DOE and the White House have reiterated their strong support for PACE programs and are expected to pursue a quick resolution to the issues raised by Fannie Mae and Freddie Mac. In California, Governor Schwarzenegger and Attorney General Brown (attachments 3 and 4) have each written letters to the Federal Housing Finance Authority in an effort to resolve these same issues.

The uncertainty raised by the Fannie Mae and Freddie Mac letters will not impact the County's public hearing scheduled for May 25, 2010. The structure of LACEP is consistent with the DOE guidelines and is designed to be a model program that will operate propitiously with the mortgage system. It is expected that clarification from Fannie Mae and Freddie Mac will be provided well in advance of LACEP's targeted start date in the fall of 2010. My office will provide your Board with additional information as soon as it becomes available.

If you have any questions, please contact me, or have your staff contact Ellen Sandt, Deputy Chief Executive Officer, at (213) 974-1186 or esandt@ceo.lacounty.gov.

WTF:BC:EFS
MS:GB:ef

Attachments (4)

c: Executive Office, Board of Supervisors
 County Counsel
 Internal Services
 Treasurer and Tax Collector



LENDER LETTER

Lender Letter LL-2010-06

May 5, 2010

TO: All Fannie Mae Single-Family Sellers and Servicers**Property Assessed Clean Energy Loans**

Fannie Mae has received a number of questions from seller-servicers regarding government-sponsored energy loans, sometimes referred to as Property Assessed Clean Energy (PACE) loans. PACE loans generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage. As PACE programs progress through the experimental phase and beyond, Fannie Mae will issue additional guidance to lenders as may be needed from time to time.

Fannie Mae supports energy-efficiency initiatives, and is willing to engage with federal and state agencies as they consider sustainable programs to facilitate lending for energy-efficiency home retrofits, while preserving the status of mortgage loans originated as first liens.

Questions should be directed to Resource.Center@fanniemae.com with the subject line "PACE." Lenders may also wish to consult with their federal regulators, who share concerns about PACE programs.

Marianne E. Sullivan
Senior Vice President
Single-Family Chief Risk Officer



Industry Letter

TO: Freddie Mac Seller/Servicers

May 5, 2010

SUBJECT: First Lien Mortgages and Energy Efficient Loans

Several states have recently enacted laws that authorize localities to create new energy efficient loan programs that generally rely on the placement of a first priority lien to secure energy efficient home improvements. Programs under these laws are sometimes referred to as Energy Loan Tax Assessment Programs or Property Assessed Clean Energy programs. Freddie Mac has begun to receive questions about these new energy loan programs.

The purpose of this Industry Letter is to remind Seller/Servicers that an energy-related lien may not be senior to any Mortgage delivered to Freddie Mac. Seller/Servicers should determine whether a state or locality in which they originate mortgages has an energy loan program, and whether a first priority lien is permitted. Freddie Mac will provide additional guidance in the event that these energy loan programs move beyond the experimental stage.

Freddie Mac supports the goal of encouraging responsible financing of energy efficient and renewable energy home improvements. We continue to work with federal and state agencies and with Seller/Servicers on initiatives for developing workable energy retrofit programs.

CONCLUSION

Please contact your Freddie Mac representative or call (800) FREDDIE if you have any questions. Seller/Servicers may also wish to contact their federal regulators, who share concerns about energy liens.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia J. McClung".

Patricia J. McClung
Vice President
Offerings Management



GOVERNOR ARNOLD SCHWARZENEGGER

May 13, 2010

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552-0003

Dear Mr. DeMarco,

I am writing to seek clarification of the Lender Letters published May 5, 2010, by Fannie Mae and Freddie Mac regarding Property Assessed Clean Energy (PACE) programs.

As you may be aware, a number of jurisdictions in California have established pilot PACE programs. Working closely with the California Energy Commission and the federal Department of Energy under the Retrofit Ramp-Up program, these local governments are successfully working with property owners and major mortgage lenders to facilitate prudent investment that improves homeowner financial positions and reduces mortgage-holder risk. These PACE programs hold great promise for creating economic opportunity, energy savings and environmental benefits through the retrofit of residential and commercial building stock.

However, the May 5 Lender Letters have created substantial uncertainty regarding Fannie Mae's and Freddie Mac's recommendations regarding these PACE programs. This uncertainty threatens to suspend existing and imminent PACE programs, strand millions of dollars of pilot program investments and cause unnecessary angst for existing PACE participants. To remedy this situation as soon as possible, I respectfully request that the FHFA direct Fannie Mae and Freddie Mac to issue immediate clarification within the next 24-48 hours to clearly provide that:

- **Past and current recipients of PACE financing in California are not in violation of the terms of their Fannie Mac/Freddie Mac Uniform Security Instruments; and**
- **Active and planned PACE programs adhering to federal PACE guidelines will not be subject to adverse action by the government-sponsored enterprises.**

Once these clarifications have been provided, the necessary next step is for the FHFA to engage directly with state and local jurisdictions and mortgage lenders to discuss the design and lender treatment of PACE property tax assessments.



Mr. Edward DeMarco
May 13, 2010
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I appreciate your attention to this matter and look forward to working with the FHFA, Fannie Mae and Freddie Mac to safeguard the people of California and other PACE stakeholders, while also enabling the promise of PACE financing.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger", written over the printed name.

Arnold Schwarzenegger

/la

cc: The Vice President
The Honorable Shaun Donovan, Secretary of Housing and Urban Development
Mr. Alfred Pollard, Federal Housing Finance Agency General Counsel



EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

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E-Mail: Cliff.Rechtschaffen@doj.ca.gov

May 17, 2010

Via Facsimile and U.S. Mail

Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, N.W.
Washington, DC 20552-0003
FAX: (202) 414-3823

RE: Fannie Mae Lender Letter LL-2010-06 (May 5, 2010) and
Freddie Mac Industry Letter (May 5, 2010) re Property Assessed Clean Energy
(PACE) Programs

Dear Acting Director DeMarco:

Property Assessed Clean Energy (PACE) programs authorize local governments to finance energy efficiency and renewable energy improvements to the benefit of homeowners and small businesses. In California, PACE financing is not accomplished through loans in the traditional sense, but rather through local governments' long-standing and well-recognized powers to assess and tax. PACE programs in California can assist thousands of individual participants statewide, help to drive the State's green economy, and create thousands of jobs.

On May 5, 2010, Fannie Mae and Freddie Mac issued short, somewhat cryptic lender and industry advice letters concerning PACE programs. While the advice letters do not expressly mention California PACE programs, they have nonetheless caused confusion and concern among California PACE stakeholders. By this letter, we request that the Federal Housing Finance Authority (FHFA) immediately confirm in writing that the advice letters do not affect PACE in California.

Edward DeMarco, Acting Director
May 17, 2010
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As you are likely aware, the California Attorney General's Office at the end of last year began a discussion with FHFA staff about PACE in California. During these discussions, your staff assured this Office that we would continue to work together on issues related to PACE. Relying in part on this assurance, California has invested substantial resources in PACE programs, consistent with the White House's "Recovery Through Retrofit" policy document and with the express support of the Department of Energy. A substantial portion of the approximately \$300 million in Energy Efficiency and Block Grant funding, and a substantial portion of the over \$220 million in additional American Recovery and Reinvestment Act funds administered by the California Energy Commission through its State Energy Program, have been dedicated to PACE programs. Moreover, California recently passed legislation creating a \$50 million state reserve fund that will allow participating local governments to obtain financing for PACE on more favorable terms.

The disruption caused by Fannie Mae's and Freddie Mac's recent actions may have serious financial implications for participating local governments and the homeowners and small businesses participating in these programs in California. To take just one example, Sonoma County, through its PACE program, already has financed over 800 energy improvement projects. But the repercussions will be wider still. PACE programs in California create reliable markets for new technologies in energy efficiency, renewable energy, and water efficiency. They thus support green manufacturing jobs and thousands of additional jobs associated with installation and maintenance of energy efficiency and renewable energy projects. Now is not the time to create unnecessary uncertainty in these important emerging businesses and industries.

Based on our recent conversation with your General Counsel, Alfred Pollard, we understand that the May 5, 2010, letters were not intended in any way to signal a change in the position of FHFA, Fannie Mae or Freddie Mac regarding PACE in California. Accordingly, we request that FHFA immediately confirm in writing that participants in California PACE programs are not in violation of Fannie Mae/Freddie Mac Uniform Security Instruments prohibiting loans that have a senior lien status to a mortgage. We are open to discussing with you what form that confirmation should take, including, but not limited to, withdrawal of the May 5, 2010, letters.

We would prefer not to have to pursue some form of declaratory relief to resolve the confusion, but, because of the importance of the issue to California, we certainly reserve that as an option if a clear and unequivocal response is not forthcoming.

— continued —

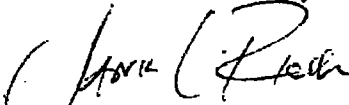
Edward DeMarco, Acting Director
May 17, 2010
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Once this immediately pressing matter is resolved, we look forward to discussing with you what longer-term solutions may be warranted to foster the continued responsible development of PACE programs in California.

Sincerely,



CLIFFORD RECHTSCHAFFEN
Special Assistant Attorney General



JAMILL L. RICHARDS
Supervising Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: Joseph R. Biden Jr., Vice President
Dianne Feinstein, U.S. Senator
Barbara Boxer, U.S. Senator
Steven Chu, Secretary, U.S. Department of Energy
Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development
Timothy Geithner, Secretary, U.S. Department of the Treasury
Carol Browner, Director, White House Office of Energy and Climate Change
Nancy Sutley, Chair, Council on Environmental Quality
Michael J. Williams, President and Chief Executive Officer, Fannie Mae
Charles E. Haldeman, Jr., Chief Executive Officer, Freddie Mac
Arnold Schwarzenegger, Governor, State of California
Bill Lockyer, State Treasurer and Chair, CAEATFA
Karen Douglas, Chair, California Energy Commission